IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1210 of 2006

SUMIT SHARMA
V/S
SMT.SUMAN SAINI & ORS.

Mr. SP BHATI, for the appellant / petitioner

Mr. SURENDRA SURANA, for the respondent

Date of Order : 4.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter comes up for consideration of stay. However, in view of the small controversy involved, and with the consent of learned counsel for both the parties, the matter is being finally disposed of.

By the impugned order dated 25.2.2006, the learned trial Court had directed the present appellant to complete the construction according to the agreement, and deliver possession to the plaintiff, and the plaintiff was directed to furnish a bank guarantee for a sum of Rs.50,000/-, to the effect that in the event of plaintiff's failure in the suit, on the direction of the Court the amount will be paid to the defendant. Against this order, a review petition was filed, wherein the order was partly modified, and it was directed that the payment shall be made to the defendant only if a retired Civil Assistant Engineer of Public Works Department, as may be authorised by the Court, certifies

that the defendant has raised additional construction on the spot, which was orally directed by the plaintiff, or was necessary for completing the contracted work.

Considering the totality of the circumstances, and with the consensus of both the learned counsel for the parties, the impugned orders are modified in the manner that the parties shall get the coloured photographs of the entire construction from appropriate photographer in their presence, and at the same time, they shall also obtain a report from the Assistant Engineer of P.W.D., Abu Road about the nature and quality and extent of construction, and shall submit the photographs and report to the learned trial Court, and thereafter, the plaintiff would be entitled to take possession of the premises. At the same time, the plaintiff shall furnish a bank guarantee as directed in the order dated 25.2.2006 before taking possession of the house. The learned trial Court is also directed to decide the main suit most expeditiously.

The appeal is accordingly, disposed of.

(N P GUPTA),J.

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